

**FISCAL YEAR 2010  
REPETITIVE OR SIGNIFICANT  
FINDINGS OF THE  
NIH BOARD OF  
CONTRACT AWARDS**

### **CONTRACT TYPE**

- Inadequate justification of contract type selected.
- Inaccurate statement that contract will be paid on a lump sum basis when the contract type contemplated is an Indefinite Delivery, Indefinite Quantity Contract, to be paid under individual task orders.
- Inconsistent contract types cited in various locations in the Acquisition Plan.

### **CONFLICT OF INTEREST**

- Potential conflict of interest for a technical proposal reviewer was not adequately documented.

### **CONTRACT FILE**

#### **A. Presolicitation Documentation**

- Incomplete and inconsistent documentation in Acquisition Plan.
  - Methodology for determination of profit is flawed.
  - No certification of fund availability by funding official.
  - IGCE was insufficiently detailed.
  - The Acquisition Plan lacks documentation regarding the basis for the minimum and maximum quantity or dollar value (NIH Policy Manual 6016-2).
  - No discussion in the Acquisition Plan of the decision to award a contract to a commercial source, contrary to the FAR requirement that the Government use priority sources for supplies and services before using commercial sources, and the fact that GSA MOBIS Federal Supply Schedules could fulfill the requirement.
  - Lack of documentation and certificate of training for project officer (HHSAR 301.606-71).
  - The Information System Security Officer (ISSO) did not complete the Information Security Pre-Solicitation Checklist and Certification Form referred to in the Information Security Program Contractor Oversight Guide on the HHS Internet at <http://irm.cit.nih.gov/security/IT-Security-Acquisition-Provisions.pdf>.

- Acquisition Milestones were not updated as required.
- No discussion on the use of performance-based contracting or the use of performance standards for future task orders on IDIQ contract (Manual Chapter 6016-2).
- The Determination and Findings for the use of Time and Materials contracts was not signed by the Head of the Contracting Activity (FAR 16.601(d)).
- File does not include Minutes indicating approved concept clearance, or a notification to offerors that concept clearance is pending in accordance with Manual Chapter 6315-1.
- No written documentation that demonstrated that SBA accepted a requirement into the 8(a) program (FAR 19.804-3).
- Planned use of ARRA funds to award a contract for severable services that would be performed after September 30, 2010, in violation of appropriations law (Anti-Deficiency Act).
- Planned use of incremental funding of task order determined to be for nonseverable services, in violation of appropriation law (should be fully funded at award or multi-year authority obtained).
- Lack of internal file review.
- HHS Form 653 was not approved by the SBA PCR (HHSAR 319.501).

**B. Synopsizing**

- Incorrect identification of type of Notice (i.e., identifying a RFI Notice as a Sources Sought Notice; identifying a Sources Sought Notice as a Presolicitation Notice; posting a Sole Source Notice as a Special Notice).
- Notice did not meet requirements of FAR 5.207 in that it did not provide a clear, concise description of services to be procured.
- No draft presolicitation notice in the file (FAR Part 5.2).
- Sources Sought announcement did not use the language and format found at [http://dhhs.gov/asfr/og/acquisition/policies/attachment\\_1.html](http://dhhs.gov/asfr/og/acquisition/policies/attachment_1.html).

- The Sources Sought and Presolicitation Notice contained a different small business subcontracting goal than the goal stated in the solicitation. Both stated goals differed from the NIH subcontracting goal set by the SBA PCR.
- The Presolicitation Notice did not include the statement that all responsible sources may submit a bid, proposal, or quotation, which shall be considered by the agency as prescribed under FAR Part 5.207.
- Inclusion of mandatory criteria in the Sources Sought Announcement that were not carried over into the RFP.
- Pre-award notice under a small business set-aside did not include information required by FAR 15.503(a)(2)(ii)(B).
- Time frames not compliant with FAR 5.203, which requires issuance of solicitation no sooner than 15 days after date of publication of presolicitation notice.

**C. Solicitations and Contracts**

- No issue date or closing date on RFP.
- Incorrect period of performance cited in RFP.
- Solicitation not compliant with ARRA requirements.
- The solicitation incorrectly indicates that someone other than the Contracting Officer (who would not be a warranted Contracting Officer) will review and approve the task order, or execute other reviews/approvals that are required to be made by a Contracting Officer.
- In an IDIQ solicitation, there are no sample task orders included (Manual Chapter 6016-2, Paragraph G.5).
- Inappropriate use of Late Proposal Clause (HHSAR 352.215-70) when the contract is not for biomedical or behavioral R&D, or when the HCA has not authorized the use of the clause (HHSAR 315.208).
- Lack of evaluation criteria for sample task in an IDIQ solicitation.
- Lack of inclusion of separate evaluation factor or mandatory qualification criterion for Section 508 (HHSAR 315.304).

FISCAL YEAR 2010

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- Use of a mandatory criterion that clearly gives an advantage to the incumbent.
- Inconsistency in the solicitation document regarding the dollar amount of the small business size standard and the dollar amount of the acquisition.
- Use of incorrect/outdated Wage Rate Determination.
- Solicitation did not comply with the Federal Information Security Management Act and coverage of the Act in the HHSAR.
- Solicitation incorrectly stated that the award would be to the lowest price, technically acceptable offer, while in fact, the award was intended to be made on a trade-off basis.
- Lack of a separate technical evaluation factor for solicitations for EIT products and services (HHSAR 315.304(a)).
- Non-inclusion of provisions/clauses required by FAR, HHSAR or NIH as set forth in the Workforms, or use of outdated provisions/clauses.
- Inclusion of language for various provision/clauses that is inconsistent with FAR or HHSAR clauses and thus require a deviation.
- Inclusion of maximum order limitation language in an IDIQ solicitation that would permit the resultant contractor to be relieved of its obligation to honor the first Task because the dollar amount of that task would fall below the amount which the contractor would be obligated to accept.
- Inclusion of a requirement that is apparently duplicative of another current requirement.
- Assigning multiple NAICS codes to individual tasks in conflict with FAR 19.102(c) and (d).
- Labor categories listed in the Statement of Work did not provide sufficient information (i.e., skills, experience, education levels, etc.) to offerors to allow them to propose appropriate loaded labor rates.
- Solicitation did not include the Service Contract Act when it was clear that it was required.

- Evaluation factors were presented as instructions to offerors regarding what they should address in technical proposal, but did not state how each of the factors would be evaluated (HHSAR 315.204-5(c)(2)(i)).
- Evaluation criteria as set forth in solicitation did not clearly establish minimum requirements in sufficient detail for offerors to submit proposals that could be fairly evaluated.
- Evaluation factors were not set forth in terms of relative importance.
- Evaluation factors were so numerous and were each assigned so little weight that the Government evaluators would find it difficult to assess the proposal that truly offered the best value.
- Past performance was included as a technical evaluation factor in Section M, but it was not scored.
- Past performance was included in Section M, but was not addressed in Section L of the solicitation.
- Incorrect statement in RFP that change in scope can be effected by a change order, when this type of change requires approval of a sole source justification.
- Incorrect statement that price will only be considered after determination of the competitive range and evaluated only on the offerors who are “short-listed” whereas FAR requires evaluation of price prior to the establishment of the competitive range (FAR 15.306(c)(1)).
- Solicitation did not include an evaluation factor for the submission and evaluation of Small Business Participation Plans from large businesses.
- Structure for evaluation of past performance was significantly flawed as it mixed evaluation of past performance with future abilities.
- Use of unclear, undefined and/or ambiguous language in the Statement of Work which could lead to disputes.
- Contract set forth on improper form (i.e., SF 26 in lieu of SF 1449 for a commercial item).
- Inclusion in the contract of deliverables that were not mentioned in the Statement of Work or elsewhere in the RFP.

- Inaccuracies in the discounted unit prices as compared with the extended (total) price for each item.
- Contract did not include a required Small Business/Small Disadvantaged Subcontracting plan.
- IDIQ Contract did not include a delivery/task order to obligate funds at time of award.
- Contract subject to the Service Contract Act (SCA) exceeded the allowed period of performance of five years (FAR 22.1002-1).
- Noncompliance with Recovery Act guidance that requires the word “ARRA” to be the first word of the title of any applicable contract/order.
- Statement in proposed contract that implies that fee will be computed on a cost-plus-percentage-of-cost basis, in violation of FAR 16.102(c).

**D. Contract File Documentation**

- Lack of Justification regarding allowed travel expenses that permit the prospective contractor to travel in other than economy class.
- Geographical restriction not adequately documented with rationale for the restriction.
- Inadequate support in file for determination of a technically unacceptable proposal (i.e., no discussion of weaknesses in technical proposal to support the technically unacceptable determination.
- No documentation in file to show that at least 50% of the HHS personnel on the technical evaluation panel successfully completed the necessary training courses.
- Improper elimination of offerors from the competition prior to conducting technical proposal evaluation.
- Failure to document how proposed costs were considered in the establishment of the competitive range (FAR 15.305(a) and 15.306(c)).
- Incomplete discussion of the rationale for not obtaining a Certificate of Current Cost or Pricing Data.

- Failure to conduct meaningful negotiations.
- Inadequate discussion of evaluation of small disadvantaged business participation.
- No documentation of contractor responsibility.
- No discussion in Summary of Negotiation regarding past performance evaluation or reference checks.
- Non-designation of a COTR in conflict with the requirement of HHSAR 301.603-70 and 301.605.
- Non-compliance with the HHSAR prescription for the use of limited negotiations after the FPR.

**E. Price and Cost Analysis**

- Lack of documentation supporting a large increase in price in the out years of the contract.
- Use of indirect cost rates that were not compliant with the negotiated indirect cost agreements.
- Cost realism analysis applied to a fixed price contract.
- Violation of prohibition from obtaining Certified Cost or Pricing Data in a fixed price contract where prices agreed upon were based on adequate price competition (FAR 15.403-1)
- No file documentation to support financial responsibility determination (FAR 9.104-1), nor for direct labor costs proposed.
- Price/cost analysis flawed because issues such as the following were not adequately addressed: (1) comparison of proposed budget against IGCE could not be realistically made, (2) no evidence of documentation in file regarding source documents such as payroll, etc. (3) no documentation of comparison of proposed costs against cost in current contracts for similar work.